

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RITA RIOS

Claimant

VS.

EXCEL CORPORATION

Respondent
Self-Insured

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Docket No. 176,751

ORDER

Claimant appeals from a Preliminary Hearing Order of Administrative Law Judge Thomas F. Richardson dated July 20, 1995, wherein Judge Richardson refused to compel testimony from respondent witnesses regarding the respondent's treatment of employees other than the claimant on qualification and disqualification on certain jobs.

ISSUES

Whether the Administrative Law Judge exceeded his jurisdiction in refusing to compel testimony from respondent employees regarding the employee qualification and/or disqualification on the Japanese machine.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a limits appeal from preliminary hearings to situations involving disputed issues of whether (a) the employee suffered an accidental injury, (b) the injury arose out of and in the course of the employee's employment, (c) notice is given and claim timely made, or (d) certain defenses apply. The above enumerated issues are considered jurisdictional and subject to review by the Board from preliminary hearing orders. The issue raised by claimant in this matter is not enumerated in K.S.A. 44-534a and appeal under this statute is not appropriate.

Claimant's only other entitlement to appeal from a preliminary hearing is pursuant to K.S.A. 44-551 which grants appeals from preliminary hearings if it is shown that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

In the case at hand, claimant contends the Administrative Law Judge erred in refusing to grant claimant the right to cross-examine certain employees of respondent regarding employee qualifications on the Japanese machine and the retention or termination of said employees subsequent to their attempted qualification.

The Administrative Law Judge, as the trier of fact, must necessarily supervise and control his or her docket. This requires that the Administrative Law Judge be in charge of decisions dealing with the admission of evidence during the litigation of a case. The Appeals Board does not find it appropriate to second guess Administrative Law Judges during ongoing litigation. The decision by Judge Richardson to allow or deny questions during the litigation of a workers compensation matter is only reviewable at the conclusion of the case when all evidence has been submitted and a final award rendered. Until such time, the Appeals Board will not invade the province of the Administrative Law Judge. The Appeals Board finds the Administrative Law Judge did not exceed his jurisdiction in denying claimant the right to cross-examine certain witnesses regarding their qualifications or lack of qualifications for employment on the Japanese machine and their resultant employment or termination thereafter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review should be and is hereby dismissed and the Order of Administrative Law Judge Thomas F. Richardson dated July 20, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, Kansas
David J. Rebein, Dodge City, Kansas
Thomas F. Richardson, Administrative Law Judge
Philip S. Harness, Director